

8 July 1969

MEMORANDUM FOR: Acting Director of Central Intelligence

SUBJECT: Ervin Bill - S. 782

1. This memorandum is for information.

2. Attached is a description of the key points we find objectionable in the Ervin bill, which is designed to protect Government employees, their constitutional rights, and to prevent unwarranted governmental invasions of their privacy. Paragraphs 4 and 5 describe the most worrisome aspects.

3. The bill passed the Senate last year 79 to 4 and probably will get a large majority again, although conceivably an exception for the FBI, CIA, and NSA would not be disagreeable to many Senators. The House does not favor this bill at the moment, and Chairman Henderson of the House Committee has prepared a different version.

4. In the Executive Branch the Civil Service Commission opposes the bill in toto. Justice, Defense, and State agree to one degree or another with our position, as does Ken BeLieu on the White House legislative staff, but no one wants to tackle Senator Ervin in a head-on battle except the Agency, and we have gotten nowhere.

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LAWRENCE R. HOUSTON  
General Counsel

Attachment

cc: Executive Director  
Legislative Counsel

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The objectives of S. 782 we would all agree are laudable in attempting to assure against unreasonable actions with regard to Government employees. However, as phrased, a number of provisions would have an adverse and disruptive effect on procedures and practices of CIA which have been developed over the years to screen out disloyal or unsuitable employees. The bill would:

1. Preclude the Agency from taking notice of any employee's attendance at a meeting held by a subversive group or organization. [Sec.1(b) and Sec.1(d)]

2. Give any employee the right to counsel or other person of his choice if he is asked to submit to interrogation which could lead to disciplinary action. Such interrogation can involve most sensitive information, particularly as to intelligence sources and methods, and this would permit the presence of uncleared and possibly hostile counsel at the earliest stages. [Sec.1(k)]

3. Would require a personal finding by the Director, or his designee, in each case with respect to certain key questions in polygraph or psychological tests. [Sec. 6] CIA asks these questions of all applicants because it has been determined that they are required to protect national security. It is a fact that literally hundreds of homosexual cases have been uncovered during polygraph interviews where prior full-field investigations had failed to uncover the true situation. The requirement for individual determinations would impose an arbitrary and unnecessary impediment to an otherwise orderly and systematic procedure.

4. Permit an employee or applicant, who alleges that he is affected or aggrieved by any violation or threatened violation of any provision of the act, immediate access to the U.S. district court without regard to whether such employee or applicant shall have exhausted any administrative remedies which may be provided by law. Communists, or other subversives acting on their own or on instructions from foreign agents, could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews. There is little doubt that such groups would be quick to recognize and exploit the weapon provided by this Section. The mere filing of such complaints let alone a hearing on the merits would involve almost inevitably classified information concerning the Agency and its activities. [Sec.4] Moreover, a campaign of leftist inspired harassing litigation would seriously burden Agency administrative resources and might virtually paralyze our recruitment program.

5. Establish a Board of Employees' Rights which would have the authority and duty to receive and investigate written complaints from or on behalf of any employee or applicant claiming to be affected or aggrieved by any violation or threatened violation of any provision of the act. This would permit airing before this Board situations which might again involve information which would be detrimental to the national security. In a CIA case it might well be that a defendant employee had been ordered by the Director not to provide information on a matter since it was highly classified; thus, we would have a conflict between the Board's authorities and the Director's responsibility for protection of intelligence sources and methods. [Sec. 5]

These provisions are, we believe, in clear conflict with the statutory responsibilities of the Director of Central Intelligence and are unnecessary, since adequate machinery is provided for any employee or applicant for employment who might consider himself aggrieved.